United Nations S/AC.37/2003/(1455)/82

Security Council

Distr.: General
6 November 2003
English
Original: Spanish

Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

Note verbale dated 5 November 2003 from the Permanent Mission of Nicaragua to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Nicaragua to the United Nations presents its compliments to the secretariat of the Security Council Committee established pursuant to resolution 1267 (1999) and transmits herewith the official report of the Government of Nicaragua pursuant to Security Council resolution 1455 (2003) (see annex).

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Annex to the note verbale dated 5 November 2003 from the Permanent Mission of Nicaragua to the United Nations addressed to the Chairman of the Committee

Report of the Government of the Republic of Nicaragua submitted in compliance with Security Council resolution 1455 (2003)

One of the strategic missions of the Government of the Republic of Nicaragua is to "convert the country into a real political ally — responsible, reliable and constant — of the democratic nations of the world in the fight against terrorism, drug trafficking and money-laundering".[1]

It should be emphasized that although Nicaragua has not been a direct victim of international terrorism, it has shown firm determination in combating this scourge at the national, regional and international levels; it has condemned energetically the acts that occurred in the United States of America on 11 September 2001 and has expressed its solidarity with the victims' families and the United States Government.

In response to the request from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999), the Government of Nicaragua is presenting an updated report on steps taken to implement the measures outlined in paragraph 4 (b) of resolution 1267 (1999), paragraph 8 (c) of resolution 1333 (2000) and paragraphs 1 and 2 of resolution 1390 (2002).

Report of the Government of Nicaragua

Nicaraguan legal provisions do not permit the freezing of funds or financial assets and other resources merely on the grounds of suspected participation in terrorist activities. However, under domestic legislation, the financing of terrorism is included among money-laundering offences, in accordance with the provisions of Act No. 285 on Narcotic Drugs, Psychotropic Substances and other Controlled Substances and Laundering of Money and Assets Deriving from Illicit Activities which, in article 65 (a), establishes the following:

> "Any person who either directly or through a natural or legal person carries out with other persons or with establishments of a banking, financial, commercial or any other nature, commercial transactions and operations derived from or preceding illicit activities commits the offence of money-laundering".

The Code of Criminal Procedure also sets out a procedure in this respect. As for the procedure for freezing the funds of persons suspected of financing terrorist activities, a judicial authority may order, directly or through the Superintendency of Banks, the freezing or blocking of the accounts of persons accused or convicted in connection with any illicit activity, including terrorism-related activities.

The details of operations effected through such accounts — or others that are not frozen — may be provided to the competent authorities for the purposes of investigating or bringing charges, either by means of a simple request of the Attorney-General of the Republic to the Superintendent of Banks, or once the judicial authority orders the lifting of bank or financial secrecy. The following

[1] Excerpt from the inaugural address of the President of the Republic of Nicaragua, Enrique Bolaños Geyer, 10 January 2002.

provisions empower the judicial authorities to order the freezing of accounts as a preventive measure during proceedings:

- Article 167 of the Political Constitution;
- Article 12 of Act No. 260: "Organic Act on the Judiciary";
- Article 109 of Act No. 314: General Act on Banks, Financial Institutions Other than Banks and Financial Groups;
- Article 167, subparagraphs 2 (c), (d) and (e) of Act No. 406 establishing the Code of Criminal Procedure, which states: "genuine precautionary measures include: ... (c) the freezing of bank accounts, share certificates and bonds; (d) preventive sequestration or seizure; (e) the placing of companies in administration".

In principle, the judicial procedure for freezing funds is identical for both terrorism and money-laundering. However, in the latter case, it may also be preceded by the transmission of a **suspicious transaction report** from a bank to the Superintendency of Banks, in accordance with the provisions of Act No. 285 and the Regulation for the Prevention of the Laundering of Money and Other Assets Applicable to all Financial Institutions under the Supervision of the Superintendency of Banks and Other Financial Institutions, which stipulates that banks and other financial institutions should provide information on any transaction suspected of being linked to money-laundering or which departs from the normal pattern associated with the account in question.

The Superintendency of Banks and Other Financial Institutions immediately transmits such reports to the Financial Analysis Commission chaired by the Attorney General. In conjunction with circulars containing lists of the names of persons and entities allegedly linked to terrorism, such reports could contribute to detecting transactions which may be associated with the misappropriation of funds for terrorist activities, either because the recipient of the funds has links to suspicious persons or entities, or because subsequent investigations uncover evidence to that effect.

The above-mentioned Financial Analysis Commission, provided for in article 23 of Act. No. 285, entitled "Act on Narcotic Drugs, Psychotropic Substances and other Controlled Substances and Laundering of Money and Assets Deriving from Illicit Activities", was established on 25 February 2002. Under Act No. 285, the functions of this Commission are aimed, in general, at preventing the illicit activities described in this Act from being committed in Nicaragua.

These legal provisions help to regulate the prevention and suppression of the financing of terrorist acts. The Superintendency of Banks and Other Financial Institutions, for its part, has instructed banks and financial institutions to refer to the "Guide for Financial Institutions in Detecting Terrorist Financing", prepared by the Financial Action Task Force on Money Laundering (FATF).

As for prevention of the financing of terrorist acts, the Financial Analysis Commission provided an inter-agency response to Nicaragua's Self-Assessment Questionnaire on the eight FATF Special Recommendations on Terrorist Financing. It should be noted, however, that Act No. 285 does not assign it specific functions in this regard. There is now a draft law that would supersede Act. No. 285 and incorporates new elements concerning the Commission.

We have been informed that the main tasks that the Commission has carried out have been related to the problem of money-laundering, in close coordination with the Executive Secretariat of the National Anti-Drug Council, to which this Commission is attached. For example, it submitted an inter-agency response to Nicaragua's Self-Assessment Questionnaire on the prevention and control of money-laundering, on the basis of the 40 FATF recommendations, 19 FATF recommendations and 25 FATF criteria for identifying non-cooperative countries or territories. This Superintendency also keeps the Commission duly informed of reports of suspicious or significant operations received from the entities under its supervision.

The laws and other regulations do not expressly establish which Nicaraguan authorities are responsible for issuing the lists of persons and entities potentially linked to terrorism or the procedure leading to the inclusion or deletion of names. Since the creation of the National Committee for the Implementation of the Central American Plan for Comprehensive Cooperation to Prevent and Combat Terrorism and Related Activities, however, the following procedure has been in place:

- The Ministry of Foreign Affairs has received these lists through official channels (embassies or multilateral organizations) and has forwarded them to the competent local authorities, including the Superintendency of Banks and Other Financial Institutions;
- The Superintendency, on the basis of article 3, paragraph 12, and article 19, paragraph 1, of Act No. 316, immediately transmitted all the lists it received to the institutions under its supervision, with instructions to report any operation carried out with any of the persons or entities contained in those lists;
- In the event of any report to this effect — which has not occurred — the Superintendency will contact the Office of the Attorney-General of the Republic to institute the relevant procedure under the law.

In October 2001 Nicaragua signed the 1999 United Nations Convention for the Suppression of the Financing of Terrorism. The Nicaraguan Parliament (National Assembly) ratified that Convention by means of Legislative Decree No. 3287, which was published in Official Gazette No. 92 of 20 May 2002. In addition, by means of Decree No. 62-2002, published in Official Gazette No. 121 of 28 June 2002, the President of the Republic ratified the United Nations Convention against Transnational Organized Crime, which was approved by the Nicaraguan National Assembly by means of Legislative Decree No. 3246, published in Official Gazette No. 38 of 25 February 2002.

Nicaragua is also a member of the Caribbean Financial Action Task Force (CFATF) and, in that connection, pursuant to Security Council resolution 1373 (2001), the Financial Analysis Commission in September 2002 provided replies to the self-assessment questionnaire on the eight recommendations of the Financial Action Task Force on the financing of terrorism; these replies reflect the situation of Nicaragua with regard to that issue. The Ministry of the Interior is familiar with the document in question, having been apprised of it by the Secretariat of the National Council against Drugs, which has been working in close collaboration with the Financial Analysis Commission.

Also, the National Assembly has drawn up a new draft Penal Code, which could include elements relating to terrorist activities and their financing; we are

forwarding the international regulations to the Assembly for their incorporation where appropriate.

In Title XI, Chapters I and II, articles 493, 499 and 500 of the Penal Code, terrorist acts are classified as offences against public order. Individuals involved in the financing of terrorism could be classed as "promoters", "instigators" or "essential cooperators" and terrorist organizations are covered by the concept of criminal conspiracy. In addition, terrorist organizations can be found under the concept of "Association to commit an offence" established in the same Code. Article 546 of Title XIII, Chapter II, of the Penal Code concerning offences compromising the peace of the Republic should also be mentioned in this context.